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DEBRA P. HACKETT,
U.S. DISTRICT COU
MIDDLE DISTRICT A

March 8, 2008

United States District Court
P.O. Box 711
Montgomery, Alabama 36101-0711

Attn: Susan Russ Walker
United States Magistrate Judge

RE: SM 2007 000341 Action No. 3:07-CV-1091-WKW
SM 2007 000342 Action No. 3:07-CV-1092-WKW

This information on last month's Supreme Court ruling arrived in the mail today. I am attaching a copy and requesting that it be included in the documents sent by certified mail on Friday, March 7, 2008.

"Can an individual employee sue to recover losses to his 401(k) when a company fails to follow his investment instructions?"

Irene H. Wasserman
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Robert N. Wasserman
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Your AARP

The Law

By Emily Sachar

■ The issue: Can an individual employee sue to recover losses to his 401(k) when a company fails to follow his investment instructions?

James LaRue, 47, has always been careful with his money. His retirement security, he says, depends on it.

But LaRue was shocked when he discovered that his investment instructions to his 401(k) plan administrator were not followed. He had invested his 401(k) in stocks; in 2000 he asked, in writing, that the funds be moved into government-backed securities and cash funds.

Because the 401(k) plan didn't follow his instructions, as required by law, LaRue claimed he lost about $150,000 when stock prices fell. He filed suit to recover his losses, claiming the plan administrator mishandled his funds. But lower federal courts argued that only plan investors as a whole, and not individuals, could seek damages and rejected his claim. "This is just unjust," LaRue said in an interview from his home in the Dallas suburb of Southlake, Texas, where he lives with his wife and four children ages 6 to 16. "There has to be a way to fix this loophole."

Last month, the U.S. Supreme Court ruled in LaRue's favor. AARP attorney Mary Ellen Signorille said that the 1974 federal pension law known as ERISA, the Employee Retirement Income Security Act, does not make clear whether a 401(k) plan participant may recover losses if the plan does not properly handle an individual's funds.

"There has to be a way to fix this loophole." —James LaRue, who lost about $150,000 from his 401(k)

"It's surprising that this issue reached the Supreme Court because most people assume that if their plan fiduciary did something wrong with their 401(k) they would be made whole for any losses," she said. "If there is no right to recover losses for mishandling of 401(k) monies, people might think twice about investing in their employer's 401(k) plan. And that's not good for individuals, business or the country, especially since 401(k)s are now the dominant retirement plan."

In a friend of the court brief, AARP attorneys argued that LaRue's losses are, in fact, losses to the 401(k) plan, and any participant who had been injured would be entitled to compensation for losses.

LaRue worked as a partner at the management consulting firm of DeWolff, Boberg & Associates for 14 years until 2001. Tom Gies, partner with Crowell & Moring in Washington, which represents the firm, argued that "the current law does not allow someone like Mr. LaRue to sue for lost profits, and we think it's not in the best interests of retirement plan participants to have the Supreme Court invent that remedy."

■ What it means to you: The ruling could determine whether the 70 million who have invested $3.3 trillion in their 401(k)s have a right to sue plan administrators if instructions are not followed. If you invest in a retirement plan at work, retain a copy of any instructions to the administrator. If you make changes online, keep a copy. Under the federal Pension Protection Act of 2006, plans now must provide quarterly statements showing what's in a 401(k) account or an annual statement for those who have not made direct investments. If you're not receiving your statements or spot any problem, contact the plan administrator. The U.S. Department of Labor has a helpful website: www.dol.gov/ebsa/consumer_info_pension.html. ☐

***Emily Sachar** is a journalist and author based in Brooklyn, N.Y.*